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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN D. FIUT and RODNEY E. NEMITZ

Appeal 2007-3631
Application 10/087,046
Technology Center 2600

Decided: December 9, 2008

Before ROBERT E. NAPPI, JOHN A. JEFFERY, and CARLA M.
KRIVAK *Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1-3 and 5-27. Claim 4 has been indicated as containing allowable subject matter. App. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm the Examiner's rejection of these claims.

INVENTION

The invention is directed towards a method and system for monitoring measurement data in a wireless communication network from a remote location. Claim 1 is representative of the invention and reproduced below:

1. A method for monitoring a basestation in a wireless communication network from a location remote to said basestation, said method comprising:

acquiring at a monitoring probe arranged local to a basestation measurement data for at least one network link parameter of said basestation, measurement data for at least one wireless link parameter of said basestation, and measurement data for at least one operational parameter of said basestation;

formatting said measurement data for said at least one network link parameter, said measurement data for said at least one wireless link parameter, and said measurement data for said at least one operational parameter into a uniform format; and

communicating, in said uniform format, said measurement data for said at least one network link parameter, said measurement data for said at least one wireless link parameter, and said measurement data for said at least one operational parameter from said monitoring probe to a processor-based device arranged remote from said basestation.

REFERENCES

| | | |
|------------|--------------------|--|
| Mailandt | US 4,823,280 | Apr. 18, 1989 |
| Breed | US 5,489,914 | Feb. 6, 1996 |
| Johnson | US 5,907,800 | May 25, 1999 |
| Menon | US 2001/0001268 A1 | May 17, 2001 |
| Barshefsky | US 6,385,609 | May 7, 2002 (filed Apr. 23, 1999) |
| Wiczer | US 2002/0147936 A1 | Oct. 10, 2002 (filed Apr. 9, 2001) |
| Anvekar | US 2005/0233759 A1 | Oct. 20, 2005 (filed Sep. 17, 2001) |

REJECTIONS AT ISSUE

The Examiner rejected claims 1-3, 12, 13, 18, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson.

The Examiner rejected claims 5-7, 9, and 19 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson in further view of Breed.

The Examiner rejected claims 8 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson in further view of Mailandt.

The Examiner rejected claims 10, 11, 16, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson in further view of Barshefsky.

The Examiner rejected claims 14, 15, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson in further view of Wiczer.

The Examiner rejected claims 25-27 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson in further view of Anvekar.

ISSUES

Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson Claims 1-3

Appellants contend on pages 7-11 of the Appeal Brief and pages 2-5 of the Reply Brief that the Examiner's rejection of claims 1-3 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson is in error. We select independent claim 1 as representative of the group comprising claims 1-3 since Appellants did not separately argue claims 2 and 3 with particularity. 37 C.F.R. § 41.37(c)(1)(vii). Appellants argue that the references do not teach communicating data in a uniform format. App. Br. 8; Reply Br. 3. Appellants further argue that the references do not teach formatting measurement data for at least one network link parameter, measurement data for at least one wireless link parameter, and measurement data for at least one operational parameter. App. Br. 9; Reply Br. 4-5.

Thus, with respect to claims 1-3, Appellants' contentions present us with two issues: have the Appellants shown the Examiner erred in finding Menon and Johnson teach: (1) communicating data in a uniform format; and (2) formatting a network link parameter, wireless link parameter, and operational parameter?

Claims 12, 13, and 18

Appellants' arguments on page 11 of the Appeal Brief identify similar limitations in independent claim 12, as discussed above with respect to claim 1. Further, Appellants' arguments group claims 13 and 18 with claim 12. Thus, Appellants' arguments with respect to the Examiner's rejection of claims 12, 13, and 18 present us with the same issues as claim 1.

Claims 21 and 22

Appellants' arguments on page 12 of the Appeal Brief identify similar limitations in independent claim 21, as discussed above with respect to claim 1. Further, Appellants' arguments group claim 22 with claim 21. Thus, Appellants' arguments with respect to the Examiner's rejection of claims 21 and 22 present us with the same issues as claim 1.

Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson and Breed.

Appellants argue on pages 13-14 of the Appeal Brief and pages 7-8 of the Reply Brief that the Examiner's rejection of claims 5-7, 9, and 19 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson and Breed is in error. Appellants reason that the claims are allowable based on their dependency from claims 1 and 12. App. Br. 13; Reply Br. 7-8. Further, Appellants argue that "the Final Office Action has not provided sufficient motivation to combine Breed with Menon and Johnson, nor does any such motivation exist." *Id.*

Thus, Appellants' contentions present the same issues as presented with respect to claims 1 and 12. Further, Appellants' contentions present us

with the issue of whether the Examiner has provided a valid rationale for the reason to combine the references.

Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson and Mallandt.

Appellants argue on pages 14-15 of the Appeal Brief and pages 8-9 of the Reply Brief that the Examiner's rejection of claims 8 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson and Mallandt is in error. Appellants reason that the claims are allowable based on their dependency from claims 1 and 12. App. Br. 15; Reply Br. 8-9.

Thus, Appellants' contentions present the same issues as presented with respect to claims 1 and 12.

Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson and Barshefsky.

Appellants argue on pages 15-16 of the Appeal Brief and pages 9-10 of the Reply Brief that the Examiner's rejection of claims 10-11 and 16-17 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson and Barshefsky is in error. Appellants reason that the claims are allowable based on their dependency from claims 1 and 12. App. Br. 15-16; Reply Br. 9-10.

Thus, Appellants' contentions present the same issues as presented with respect to claims 1 and 12.

*Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson
and Wiczer.*

Appellants argue on pages 16-17 of the Appeal Brief and page 10 of the Reply Brief that the Examiner's rejection of claims 14-15 and 23-24 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson and Wiczer is in error. Appellants reason that the claims are allowable based on their dependency from claims 12 and 21. App. Br. 16-17; Reply Br. 10.

Thus, the Appellants' contentions present the same issues as presented with respect to claims 12 and 21.

*Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson
and Anvekar.*

Appellants argue on page 17 of the Appeal Brief and page 11 of the Reply Brief that the Examiner's rejection of claims 25-27 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Johnson and Anvekar is in error. Appellants reason that the claims are allowable based on their dependency from claim 21. App. Br. 17; Reply Br. 11.

Thus, the Appellants' contentions present the same issues as presented with respect to claim 21.

FINDINGS OF FACT

Menon

1. Menon teaches a telecommunication network comprising "a base station which provides wireless access for CPRUs [Customer

Premise Radio Units] to one or more public packet data networks and/or public switched circuit networks.” Menon, Abstract.

2. “Each CPRU, WARP [Wireless Adjunct internet Platform] and base station...in wireless access systems...supports self-supervision functionality to detect failures due to equipment processing, communications, quality of service and environment conditions.” Menon, ¶ [0226].
3. “The respective self-supervision functionality further supports providing failure information to the system’s OMC [Operation and Maintenance Center], via hardware status failure reports.” Menon, ¶ [0226].
4. “[W]henver a base station of the wireless access system ...is operational, it performs a measurement collection functionality.” Menon, ¶ [0227].
5. “[T]he measurement collection functionality includes, but is not limited to, a determination of the uplink radio quality and signal strength on each base station for all used, i.e., busy, over-the-air channels, the signal strength on idle, i.e., not used, over-the-air channels, the success rate of over-the-air interface procedures, and the availability and usage of the base stations’ over-the-air resources.” Menon, ¶ [0227].
6. “The base stations’ measured, and/or collected values, or results, are reported to the wireless access system.” Menon, ¶ [0228].

Johnson

7. Johnson teaches a system for preventing subscriber termination by collecting information from a variety of external data sources

which can include “a source of information relating to a competitor’s rate plans and demographic information about customers; a cellular network...which may be a source of system status information, including improper call termination information; a billing system, which may be a source of detailed information relating to calls; a customer service function, which may be a source of customer profile information and a recipient of information generated by the system; and a marketing function, which may be a source of rate plan information as well as a recipient of information generated by the system.” Johnson, col. 7, ll. 1-16.

8. “The interface transforms the data from the form in which it is received from external data sources into the form subsequently used by the system.” Johnson, col. 7, ll. 16-19.
9. “[R]ecords for both cellular originated and cellular terminated calls may variously be obtained from the MSC [Mobile Switching Center] directly, from electronic data sources and from a roamer tape [i.e., a magnetic tape containing multiple CDRs (Call Detail Records)] through [the] interface.” Johnson, col. 7, ll. 28-31, and Fig. 2.
10. The “interface translates a CDR record into a format understandable to the system - the CCF [Common Communication Format] format.” Johnson, col. 7, ll. 31-34, and Fig. 2.
11. After the record is translated into a common format, it is passed to the analysis section. Johnson, col. 7, ll. 31-34, and Fig. 2.

PRINCIPLES OF LAW

Office personnel must rely on Appellants' disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc). “[I]nterpreting what is *meant* by a word *in* a claim ‘is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.’” *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1348 (Fed. Cir. 2002) (emphasis in original) (citing *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989)).

However, the Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1583-84 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338 (Fed. Cir. 2004). “[W]here the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability.” *Ngai*, 367 F.3d at 1339 (citing *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)).

On the issue of obviousness, the Supreme Court has recently stated that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007).

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary

skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. . . . [A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id. at 1740. “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *Id.* at 1742.

ANALYSIS

Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson.

Claims 1-3

Claims 1-3 were argued as a group with claim 1 as representative.
App. Br. 7-11.

Appellants’ arguments have not persuaded us that Menon and Johnson teach communicating data in a uniform format. App. Br. 8. Appellants contend the data formatting occurs “*after* the data has been communicated” rather than prior to the data being communicated. App. Br. 8.

The Examiner has found the Menon reference teaches communicating data from a monitoring probe to a processor-based device arranged remote from the base station. Ans. 9. In addition, the Examiner has found that Johnson teaches communicating the data after it is translated into a uniform format. *Id.* We agree with the Examiner. Neither the Appellants nor the Examiner dispute the fact that Menon teaches communicating “the base stations’ measured, and/or collected values, or results...to the wireless access system” and we find the evidence supports the Examiner’s finding.

FF 6. Therefore, the issue is solely over whether Johnson teaches communicating the data in a uniform format.

Johnson teaches a system for preventing subscriber termination by collecting information from a variety of external data sources. FF 7. “The interface transforms the data from the form in which it is received from external data sources into the form subsequently used by the system.” FF 8. For example, Johnson teaches receiving information from a roamer tape and electronic data sources at the switch interface. FF 9. The switch interface takes this information and converts it into a format understandable to the system; the CCF [Common Communication Format] format. FF 10. Once this record is created, it is passed (i.e., communicated) to the analysis section. FF 11. Therefore, the information is communicated *after* it is converted into a common format. As a result, the combination of Menon with Johnson teaches communicating, in a uniform format, data to a processor-based device arranged remote from the base station. Accordingly, Appellants’ arguments have not persuaded us of error in the Examiner’s rejection.

Appellants additionally argue neither Menon nor Johnson teach the types of data indicated in claim 1, i.e., at least one network link parameter, at least one wireless link parameter, and at least one operational parameter. App. Br. 9. Appellants argue that Johnson only teaches converting one type of data into a single format and not disparate types of records into a uniform format. *Id.*

These arguments have not persuaded us of error. Claim 1 recites “formatting said measurement data for said at least one network link parameter, said measurement data for said at least one wireless link

parameter, and said measurement data for said at least one operational parameter into a uniform format; and communicating, in said uniform format, said measurement data for said at least one network link parameter, said measurement data for said at least one wireless link parameter, and said measurement data for said at least one operational parameter from said monitoring probe to a processor-based device arranged remote from said basestation.” Thus the scope of the claims includes two pieces of data formatted into a uniform format and three pieces of data are transmitted. We consider the titles given to the data, such as “network link parameter,” “wireless link parameter,” and “operational parameter” to be non-functional descriptive material. Appellants’ Specification provides no specific definition of the terms “network link parameters,” “wireless link parameters,” or “operational parameters.” We find no functional relationship to the types of data being monitored and the method claimed. As such, we consider the limitations identifying the types of data to be directed to non-functional descriptive material, and as such not to differentiate the claim from the prior art. “[W]here the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability.” *Ngai*, 367 F.3d at 1339 (citing *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)).

The Examiner has found that Johnson teaches formatting different types of measurement data (CIBER, CDR, and other formats) into a uniform format (CCF). Ans. 12. We agree with the Examiner. FF 8 and 9. Further, as the titles of the data are merely non-functional descriptive material, they do not differentiate the data monitored by Menon’s system.

Even if the data indicated in claim 1 were functionally related to the method, we do not find Appellants' arguments persuasive. The Examiner finds Menon, not Johnson, teaches the types of data collected at the base station. Ans. 11-12. We agree with the Examiner. As mentioned previously, Appellants' Specification does not provide a specific definition for the claimed parameters. The Specification merely gives examples of each. Spec. 5: 16-19. As such, we consider the Examiner's interpretation of the claimed "network parameter" as dealing with detecting failures due to equipment communications to be reasonable and supported by the Findings of FF. FF 2. Similarly, we consider the Examiner's interpretation of the claimed "wireless parameter" as dealing with detecting the uplink radio quality and signal strength on each base station, and the claimed "operational parameter" dealing with the detection of environmental conditions, both taught by Menon, to be reasonable and supported by the evidence. FF 2, 5. Accordingly, Appellants' arguments have not persuaded us of error in the Examiner's rejection.

For the aforementioned reasons, Appellants have not persuaded us of error in the Examiner's rejection of independent claim 1, or dependent claims 2 and 3 grouped with claim 1. Therefore, we sustain the Examiner's rejection of claims 1, 2, and 3.

Claims 12, 13, and 18

As discussed *supra*, Appellants' arguments directed to claim 12 present the same issues as discussed with respect to claim 1. Independent claim 12 is similar to claim 1 in that it recites communicating data in a uniform format and that the data represents "a network link parameter," "a

wireless link parameter,” and “an operational parameter.” Further, Appellants’ arguments with respect to the first issue have not persuaded us that the Examiner erred in finding that the combination of Menon and Johnson teach communicating in a uniform format. Similarly, Appellants’ arguments with respect to the second issue have not persuaded us that the Examiner erred. Applying a similar claim interpretation as discussed above with respect to claim 1, we find the recitations of “network link parameter,” “wireless link parameter,” and “operational parameter” in claim 12 are directed to non-functional descriptive material. As such, these limitations do not differentiate the claimed invention over the data monitored by Menon’s system. Therefore, we sustain the Examiner’s rejection of claims 12, 13, and 18 for the reasons discussed above with respect to claim 1.

Claims 21 and 22

Appellants’ arguments have not persuaded us of error in the Examiner’s rejection of claims 21 and 22. Appellants’ arguments that the rejection of these claims is in error for the reasons discussed with respect to claims 1 and 12 are not persuasive for the reasons discussed *supra* with respect to claims 1 and 12. Therefore, we sustain the Examiner’s rejection of claims 21 and 22.

*Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson
and Breed.*

Claims 5-7 and 9

Claims 5-7 and 9 were argued as a group with claim 5 as representative. App. Br. 13.

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 5-7 and 9. Appellants argue the rejection of claims 5-7 and 9 is in error for the reasons discussed above with respect to claim 1 (App. Br. 13). Appellants additionally argue the Final Office Action has not provided sufficient motivation, nor does any such motivation exist, to combine Breed with Menon and Johnson. *Id.* The Examiner has found the motivation to combine the references throughout the Breed reference. Ans. 13-14.

Initially, Appellants' arguments that the rejection of claims 5-7 and 9 is in error for the reasons discussed with respect to claim 1 are not persuasive for the reasons discussed *supra* with respect to claim 1. Further, Appellants' additional arguments directed to the rejection of claim 5 have not persuaded us of error in the Examiner's rejection.

Menon teaches measurement collection includes measurements of uplink radio quality and signal strength. FF 5. We consider these to be receiver measurements and transmitter measurements as recited in claim 5. Thus, as Menon teaches the limitations of the claim, the issue of whether there is motivation to combine Breed with Menon and Johnson is moot as Menon itself teaches the limitations of claim 5. Therefore, we sustain the Examiner's rejection of claims 5-7 and 9.

Claim 19

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 19. Claim 19 depends upon claim 12 and recites limitations similar to those discussed above with respect to claim 5. Appellants' arguments directed to the rejection of claim 19 present the same issues discussed *supra* with respect to claims 12, 5-7, and 9 (App. Br. 14). Therefore, we sustain the Examiner's rejection of claim 19 for the reasons discussed *supra* with respect to claims 12, 5-7, and 9.

Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson and Mailandt.

Claim 8

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 8. Claim 8 depends upon claim 1. Appellants' arguments directed to the rejection of claim 8 present the same issues discussed with respect to claim 1 (App. Br. 14-15). Therefore, we sustain the Examiner's rejection of claim 8 for the reasons discussed *supra* with respect to claim 1.

Claim 20

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 20. Claim 20 depends upon claim 12. Appellants' arguments present the same issues discussed with respect to claim 12 (App. Br. 15). Therefore, we sustain the Examiner's rejection of claim 20 for the reasons discussed *supra* with respect to claim 12.

*Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson and
Barshefsky.*

Claims 10 and 11

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 10 and 11. Claims 10 and 11 ultimately depend upon claim 1. Appellants' arguments directed to the rejection of claims 10 and 11 present the same issues discussed with respect to claim 1 (App. Br. 15). Therefore, we sustain the Examiner's rejection of claims 10 and 11 for the reasons discussed *supra* with respect to claim 1.

Claims 16 and 17

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 16 and 17. Claims 16 and 17 ultimately depend upon claim 12. Appellants' arguments present the same issues discussed with respect to claim 12 (App. Br. 16). Therefore, we sustain the Examiner's rejection of claims 16 and 17 for the reasons discussed *supra* with respect to claim 12.

*Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson and
Wiczer.*

Claims 14 and 15

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 14 and 15. Claims 14 and 15 ultimately depend upon claim 12. Appellants' arguments present the same issues discussed with respect to claim 12 (App. Br. 16). Therefore, we sustain the

Examiner's rejection of claims 14 and 15 for the reasons discussed *supra* with respect to claim 12.

Claims 23 and 24

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 23-24. Claims 23-24 ultimately depend upon claim 21. Appellants' arguments present the same issues discussed with respect to claim 21 (App. Br. 16-17). Therefore, we sustain the Examiner's rejection of claims 23-24 for the reasons discussed *supra* with respect to claim 21.

Rejection under 35 U.S.C. § 103(a) over Menon in view of Johnson and Anvekar.

Claims 25-27

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 25-27. Claims 25-27 depend from independent claims 1, 12, and 21, respectively. Appellants' arguments present the same issues discussed with respect to these independent claims (App. Br. 17). Therefore, we sustain the Examiner's rejection of claims 25-27 for the reasons discussed *supra* with respect to claim 21.

CONCLUSIONS OF LAW

Appellants have not shown the Examiner erred in finding that Menon and Johnson teach: (1) communicating data in a uniform format; and (2) formatting a network link parameter, wireless link parameter, and operational parameter.

Appellants have not shown the Examiner erred in finding that Menon, Johnson, and Breed teach: (1) communicating data in a uniform format; and (2) formatting a network link parameter, wireless link parameter, and operational parameter.

Appellants have not shown the Examiner erred in finding that Menon, Johnson, and Mailandt teach: (1) communicating data in a uniform format; and (2) formatting a network link parameter, wireless link parameter, and operational parameter.

Appellants have not shown the Examiner erred in finding that Menon, Johnson, and Barshefsky teach: (1) communicating data in a uniform format; and (2) formatting a network link parameter, wireless link parameter, and operational parameter.

Appellants have not shown the Examiner erred in finding that Menon, Johnson, and Wiczer teach: (1) communicating data in a uniform format; and (2) formatting a network link parameter, wireless link parameter, and operational parameter.

Appellants have not shown the Examiner erred in finding that Menon, Johnson, and Anvekar teach: (1) communicating data in a uniform format; and (2) formatting a network link parameter, wireless link parameter, and operational parameter.

ORDER

The Examiner's rejections of claims 1-3 and 5-27 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2007-3631
Application 10/087,046

AFFIRMED

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